HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.4275 of 2006
Date of decision : 18.12.2006

Prithvi Raj and others **.....Appellants**

versus

Bidhi Chand and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.S.M.Sharma, Advocate for the appellants.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned First Appellate Court, whereby their suit for permanent injunction in respect of removing the trees standing on the land meausring 4 kanals 16 marlas, comprised in Khasra No.60//4/2, situated within the revenue estate of village Hangoli, was dismissed.

As per the defendants, these trees have been planted by the defendants and that the plaintiffs are not in possession of the land nor have planted the trees and are, therefore, not entitled to injunction.

It is the case of the plaintiffs that on an application under Section 111 of the Punjab Land Revenue Act, the Assistant Collector, IInd Grade, passed an order on 25.5.1990 for partition of the land. The appeal filed against the said order was also dismissed on 27.2.1992 and thereafter mutation No.1546 has been sanctioned. On the basis of said

mutation, the plaintiffs claim their exclusive possession over the aforesaid land and thus, sought injunction.

It has been found by the learned First Appellate Court that the order of sanction of the mutation has not been set-aside by the District Revenue Officer vide order dated 17.2.2004. The plaintiffs were recorded to be in possession of Khasra No.60//4/2 by virtue of order of partition passed by the Assistant Collector IInd Grade, dated 25.5.1990. The said order having been set-aside, the plaintiffs cannot be said to be in exclusive possession of the said land on the basis of non existent order.

The entire claim of the plaintiffs is based on the partition in respect of which mutation No.1546 was sanctioned. Once the order of partition has been set-aside, therefore, the position prior to sanction of mutation has to be restored.

In view of the above, the finding recorded by the learned First Appellate Court cannot be said to be suffering from any patent illegality or irregularity which may raise any substantial question of law in the second appeal for consideration of this Court.

Dismissed in limine.

(HEMANT GUPTA)
JUDGE

December 18, 2006
**mohinder*